

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF NEW YORK

3 - - - - -

4 UNITED STATES OF AMERICA,

5

6 -versus-

04-CR-402

7

( SENTENCING )

8 YASSIN MUHIDDIN AREF,

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10 Defendant.

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15 TRANSCRIPT OF PROCEEDINGS held in and for the  
16 United States District Court, Northern District of New York,  
17 at the James T. Foley United States Courthouse, 445 Broadway,  
18 Albany, New York 12207, on THURSDAY, MARCH 8, 2007, before  
19 the HON. THOMAS J. McAVOY, Senior United States District  
20 Court Judge.

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2 APPEARANCES:

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5 FOR THE GOVERNMENT:

6 HON. GLENN T. SUDDABY, United States Attorney - NDNY

7 BY: WILLIAM C. PERICAK, Assistant U.S. Attorney

8 -and-

9 ELIZABETH C. COOMBE, Assistant U.S. Attorney

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12 FOR THE DEFENDANT AREF:

13 KINDLON & SHANKS

14 BY: TERENCE L. KINDLON, ESQ.

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17 ALSO PRESENT: EDWARD M. COX, U.S. Probation Officer

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1 (Court commenced at 9:31 AM.)

2 THE CLERK: United States of America versus  
3 Yassin Muhiddin Aref, 04-CR-402.

4 May I have the appearance for the Government?

5 MR. PERICAK: William Pericak, on behalf of  
6 the United States. Good morning, your Honor. Elizabeth  
7 Coombe with me.

8 THE COURT: Good morning.

9 THE CLERK: On behalf of the defendant,  
10 please.

11 MR. KINDLON: Terence Kindlon, on behalf of  
12 Mr. Aref, your Honor, sitting at counsel table with Kathy  
13 Manley from my office. Mr. Sprotbery, who was engaged in  
14 trial, is in jury selection in County Court and can't be  
15 here this morning.

16 THE COURT: All right. Are you ready to  
17 proceed with sentencing?

18 MR. KINDLON: Yes, sir.

19 THE COURT: Why don't you come up and stand  
20 before the Court so I can dialogue with you. Mr. Aref, if  
21 you would come up, sir. Good morning.

22 THE DEFENDANT: Good morning, sir.

23 THE COURT: All right. Well, there is a lot  
24 of information that's been presented to the Court in this  
25 case, and some of it's been very helpful. There has been a

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1 lot of input from the public, I received petitions, I've  
2 received many, many letters on behalf of your client,  
3 some -- a couple of them not so complementary, but the vast  
4 majority of them said a lot of nice things about him, and  
5 the Court will certainly take that into consideration.  
6 Of course, I have received and gone over the presentence  
7 investigation report and the addendums and all the briefs  
8 and submissions by counsel, which, again, have helped the  
9 Court in reaching a sentence that it will pronounce this  
10 morning.

11 So, to begin with, I know the answer to this  
12 question, Mr. Kindlon, but for the record, you have had an  
13 opportunity, have you not, to go over the contents of the  
14 presentence report with your client, Mr. Aref?

15 MR. KINDLON: Yes, sir.

16 THE COURT: And Mr. Aref, has somebody gone  
17 over in detail -- namely, Mr. Kindlon or Mr. Sprotbery or  
18 somebody from the office -- gone over the entire contents of  
19 the presentence report with you?

20 THE DEFENDANT: Mrs. Kathy.

21 THE COURT: All right. My question goes to  
22 do you understand what's in that report?

23 THE DEFENDANT: Yeah.

24 THE COURT: Okay. I thought you might. All  
25 right. Is there anything you wanted to tell me about the

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1 report, Mr. Kindlon?

2 MR. KINDLON: Anything that I have to say  
3 about the report, your Honor, with the Court's permission, I  
4 will incorporate into the remarks addressed to the subject  
5 of sentencing.

6 THE COURT: All right. Would you take the  
7 same stand, Mr. Aref?

8 (Discussion between defendant and counsel.)

9 MR. KINDLON: I know that my client has a  
10 statement that he's given a great deal of thought to that he  
11 would like to address to the Court. In response to your  
12 question, "Do you take issue with anything in the report,"  
13 what Mr. Aref has told me is that he takes issue, to use his  
14 words, with everything in the report. I have suggested to  
15 him, and with the Court's leave would ask that he be  
16 permitted, to incorporate any reservations he has about the  
17 information contained in the report into his remarks that  
18 I'm anticipating he is about to address to the Court.

19 THE COURT: Well, yeah, that's all right, I  
20 have no problem with that. But I think everybody knows here  
21 that whatever I do is gonna be appealed to the Second  
22 Circuit, and that's fine, that's what they're there for.  
23 And this is laying the groundwork for that. So, to make it  
24 easier for defense, I will give you an exception to every  
25 word in the presentence report that was said about Mr. Aref.

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1 Now there can be no doubt, when it gets to the Circuit, that  
2 you've got the foundation and the groundwork to argue  
3 anything you want about the contents of that report.

4 MR. KINDLON: Thank you, Judge. I think  
5 that's a perfect response to that. Mr. Aref likes to make  
6 detailed notes on each and every word.

7 THE COURT: Sure. That's okay.

8 (Discussion between defendant and counsel.)

9 MR. KINDLON: I think we're ready to proceed,  
10 Judge.

11 THE COURT: All right. What would you like  
12 to say on behalf of your client before I sentence him?

13 MR. KINDLON: Mr. Aref has requested the  
14 opportunity to speak himself and I have assured him that, in  
15 due course, he will be given that opportunity.

16 THE COURT: Absolutely. It is his right  
17 under the law, and he will be given that opportunity.

18 THE DEFENDANT: Thank you.

19 MR. KINDLON: And the custom and tradition  
20 and the law provides that counsel is permitted the  
21 opportunity to speak first, so I have some things I will say  
22 on your behalf and then you'll be able to speak on your own  
23 behalf.

24 THE DEFENDANT: Thank you.

25 MR. KINDLON: Okay?

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1 THE DEFENDANT: Thank you.

2 MR. KINDLON: Judge, I had hoped we would  
3 never come to this day. It was my fond hope my client would  
4 be found not guilty of all 30 counts in the indictment.  
5 But, unfortunately, we do find ourselves here today,  
6 confronted by the stark reality of Mr. Aref's conviction on  
7 10 out of the 30 counts that he went to trial with, and what  
8 I'd like to do is put this in the context of 18 USC 3553(a)  
9 and advise the Court concerning some of the factors I would  
10 like to amplify that the Court should take into  
11 consideration.

12 Now, as you know, the defense lawyers who  
13 worked on this case, myself, Mr. Sprotbery, Kathy Manley,  
14 Steve Downes, everybody, devoted a considerable amount of  
15 time and effort to presenting as full and complete a picture  
16 of Mr. Yassin Aref to this Court as we possibly could. So,  
17 I don't certainly want to repeat all of that stuff. I think  
18 the record is more than complete.

19 But I do want to just emphasize some things  
20 about the nature and the circumstances of the offense and  
21 the history and the characteristics of my client. First of  
22 all, the nature and circumstances of the offense. When the  
23 FBI came into Yassin's life, he was not in violation of any  
24 law, he was going along, he was serving as an Imam, he was  
25 the head of a family, he was, essentially, minding his own

1 business. This was not a crime that was initiated by  
2 Mr. Yassin or by his co-defendant. It was a sting, a sting  
3 that was based on a fantasy, and involved a crime that was  
4 really the creation of the Government. And unfortunately,  
5 this occurred at a time when there was a climate of the  
6 greatest fear in this country, fear that was, quite frankly,  
7 and I say this with all due respect to the current  
8 administration, fear that was flogged by the administration.  
9 And this pretend plot was carried forward by the most  
10 despicable snitch, undercover informant known as Malik, that  
11 we found in an American courtroom. It's really important to  
12 remember that Yassin Aref was not a terrorist, not even a  
13 radical and, in fact, he never posed any threat whatsoever  
14 on national security. I am not gonna reargue the motion to  
15 set aside the verdict or reargue the motion to dismiss, but  
16 I have to emphasize that the only thing that he was found  
17 guilty of was witnessing two money laundering transactions  
18 at the end of this long conspiracy that involved a grand  
19 total of \$4,000. That's it. That's all that there is to  
20 this conviction.

21 The nature and the circumstances of the  
22 offender are also required to be taken into account under  
23 3553. It's important to remember, and the Court listened to  
24 my client's testimony over a couple of days, that he's had a  
25 life that's as difficult as it is fascinating. He lived



1 under Saddam Hussain for a period of time. He lived in a  
2 country where anarchy was the only rule for a period of  
3 time. He came to this country, ultimately, as a refugee.  
4 He is a refugee, he is a man of God, he is a poet, he is a  
5 scholar, and I submit to your Honor that the record is  
6 replete with evidence of the fact that he had the greatest  
7 respect for the law. In fact, on at least one occasion when  
8 we were listening to tapes, when my client ended up  
9 lecturing Malik on the subject of morality, I had the sense  
10 I was listening to the TV character "Church Lady." He was  
11 actually telling, actually instructing Malik on ethics,  
12 honesty and concern for his fellow human.

13 Yassin Aref had a sterling reputation for  
14 honesty and courage in his community. He has been  
15 described, over and over and over again, by people who know  
16 him, by those who have submitted letters, as a loving,  
17 caring, involved head of his family. We know that his wife  
18 has been profoundly depressed by this and he is the father,  
19 loving father of four rambunctious and fully Americanized  
20 children.

21 We have to stand in awe of his scholarship,  
22 your Honor. As the Court will recall from his testimony, it  
23 was shown that when he was a young man, in order to secure  
24 his college diploma, he had to travel through war-torn,  
25 ungoverned country to attend classes, and it's only because

1 of this insatiable thirst for knowledge and the incredibly  
2 hard work he was willing to put forth that he was able to  
3 secure his Bachelor's degree and, by and by, move to Syria  
4 and start his family.

5                   Your Honor, around here, a decade or so ago,  
6 we used to listen to the stories of Governor Cuomo's family  
7 and how hard his immigrant father worked at his little  
8 grocery store in Brooklyn to get the family started. And  
9 when I learned the story of Yassin Aref, I thought "my God,  
10 this is the same story, just being repeated again."

11                   When this man was evacuated to this country  
12 by the United Nations as a refugee -- and it's important to  
13 remember, he didn't come to this country to be a terrorist,  
14 he was evacuated by the United Nations Commission on  
15 Refugees -- he didn't pick the United States. He could have  
16 gone to South America, Great Britain.

17                   When he got here, he didn't speak the  
18 language. What did he do when he first arrived? He went  
19 out and got a job, and the only job he could get was  
20 cleaning bathrooms at the Albany Medical Center Hospital.  
21 That's how this educated poet, scholar and man of God began  
22 his life in the United States, cleaning filthy bathrooms at  
23 Albany Medical Center Hospital. I said, "How many did you  
24 clean every day?" He said, "Twenty-eight. And when I was  
25 done, they sparkled," he said proudly. Because of his hard

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1 work and his dedication, he learned our language, he  
2 established himself in the community, he, by and by, became  
3 an Imam at a new mosque, and it was because of his fine  
4 qualities that he was drawn into this sting. It was because  
5 he was known as such an ethical and honest individual that  
6 he was turned to to witness the financial transactions which  
7 were an integral part of the sting.

8 Now, under 3553, the Court, and I quote from  
9 the statute, "is required to impose a sentence that is  
10 sufficient, but not greater than necessary."

11 THE COURT: That's right.

12 MR. KINDLON: And in order to calculate or to  
13 determine what that sentence should be, it is required that  
14 the Court take into account the seriousness of the offense  
15 and recognize that purposes of sentencing are to establish  
16 respect for law and to provide just punishment.

17 Again, your Honor, I have to emphasize that  
18 this offense was a fantasy created by the Government and  
19 that my client was drawn into it, that he thought, at all  
20 times, and I am not here to argue the question of guilt or  
21 innocence, and I don't want to give you that impression,  
22 your Honor, because that has been in the record of this case  
23 already established, but it's my position that my client  
24 firmly and sincerely believed at all times that he was doing  
25 the right thing, he was honoring the command, he was

1 witnessing a financial transaction between two Muslim men.

2                   It is so important when imposing a sentence  
3 that we promote respect for the law, and as this Court can  
4 see from the outpouring of community support, that has  
5 continued right up until this morning's Times Union, which I  
6 don't know if you've seen it, but it contains a very  
7 compelling editorial addressed to this Court that says, in  
8 sum and substance, temper justice with mercy, that a lengthy  
9 prison sentence will achieve nothing here. And I think that  
10 this Court can rightly, under the strict terms of 3553, can  
11 rightly take into account what the public and the community  
12 perception is about the sentence.

13                   Now, we do have to address the issue of the  
14 Guidelines, and the fact is that because of the law under  
15 which we're operating, this -- these offenses or this  
16 offense carries a guideline sentence of 360 months to life.  
17 But in this post-Booker era, any sentence is available to  
18 the Court, we are not bound by the Guidelines. And the  
19 question remains: What sentence is reasonable? And I would  
20 submit, your Honor, that a sentence that was well below the  
21 guideline range is that which is reasonable here. And I  
22 would further submit that pursuant to 5K2.0, a downward  
23 departure, based upon a combination of factors, is certainly  
24 the most appropriate.

25                   We cited, in our extensive brief, we cited a

1 couple of significant examples, a case called Blake, from  
2 the Second Circuit, where a 21-level downward departure was  
3 appropriate; a case called Gamez, where a 10-level downward  
4 departure was appropriate. And we feel that under the  
5 circumstances here, the combination of factors compels the  
6 conclusion that a downward departure would be most  
7 appropriate.

8                   Some of those factors, and they're all set  
9 forth at length, but some of the factors are the  
10 extraordinary family responsibilities that my client has;  
11 the fact that he is an Imam, a man of God; that he has -- he  
12 began his time in this country with a history of low-paying  
13 jobs; and that he has managed just the most incredibly  
14 impressive array of achievements in his life up to this  
15 tragic event.

16                   Finally, your Honor, I have to emphasize one  
17 last time that out of the 30 counts that were contained in  
18 the indictment, my client was convicted of only 10 out of  
19 the 30. Or turn that around, he was acquitted of 20 out of  
20 the 30. And I looked through these papers and through the  
21 petitions and through the letters for one thought that  
22 captures the essence of what it is that -- what message I  
23 would like to leave with this Court, and I found it in a  
24 letter from Sarah Burn (phonetic), who is a retired lawyer,  
25 who has been closely following this case from its inception.

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1 And I quoted this in the papers, but I would like to repeat  
2 these words of wisdom here in this courtroom and, again,  
3 humbly request that this Court take these words to heart.  
4 Sarah Burn writes, "The terrorists are weakened when our  
5 system works the way it is supposed to. Granting leniency  
6 in sentencing the Imam is just and it is vital to show the  
7 integrity of our system."

8 Thank you, Judge.

9 THE COURT: Thank you, Mr. Kindlon.

10 Mr. Pericak, Miss Coombe?

11 MR. PERICAK: Yes, your Honor. Your Honor, I  
12 don't intend to repeat everything that's in the papers, but  
13 I want to highlight a couple of important points.

14 The charge which carries the most severe  
15 guideline, 2339B, is providing material support to a Foreign  
16 Terrorist Organization, and it is crystal clear from the  
17 evidence, the operative facts show that Mr. Aref engaged in  
18 conduct that was exactly the kind of conduct that Congress  
19 and the Sentencing Commission contemplated when they enacted  
20 the severe guideline. And that conduct was when Mr. Aref  
21 was told by the informant that he worked for  
22 Jaish-e-Mohammad, Mr. Aref recognized them immediately as  
23 being on the list as a terrorist organization. And we've  
24 quoted in our memo and quoted to the Court before and  
25 Mr. Aref's conclusion with respect to this was two-fold:

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1 One is, "Should I help them," that was the informant's  
2 question. And he said, "It is wise for you to help them if  
3 you can." That was his advice. "Should I help this Foreign  
4 Terrorist Organization?" "It is wise for you to help them  
5 if you can. But be very careful, because if they find a  
6 link, if they find a link, you're gonna go to jail." That  
7 was his advice, your Honor, and that's exactly the kind of  
8 conduct in the context of which this guideline was enacted.

9 And we all know, and Mr. Kindlon readily  
10 pointed out, it's a sting. But a conspiracy, by definition,  
11 usually is prosecuted before any harm is committed, before  
12 the final act. And so there's no question that conspiracies  
13 are punished based on the intent and the belief of the  
14 person engaged in it. And in this case, it's very clear  
15 that Mr. Aref knew exactly what this organization was and  
16 what was involved.

17 And I do want to emphasize something else.  
18 In the contacts that Mr. Aref had with the FBI, especially  
19 Agent Hoover, the Court will recall he told him that he  
20 would definitely bring any suspicious activities or  
21 individuals to the FBI's attention if he -- if they came to  
22 his attention. Definitely. He used that word "definitely."  
23 And I submit to the Court that when he's told, "I work for  
24 JEM," and he not only doesn't bring it to the FBI's  
25 attention, but says, "Be very careful," and when he's later

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1 told in February, February 12th, there's gonna be a missile  
2 attack next week, and instead of bringing it to the  
3 attention of the FBI, as he promised Agent Hoover he would,  
4 he said, "Don't talk about that kind of thing," and told the  
5 suicide bomber story. "Even the suicide bomber doesn't tell  
6 his own mother when he's about to engage in that conduct."  
7 And this is the type of conduct that the Court should take  
8 into consideration when deciding that this is a truly  
9 appropriate guideline range.

10 Just to address the suggestion that Mr. Aref  
11 was minding his own business, I just want to remind the  
12 Court, and I'm sure the Court is aware, that the FBI had the  
13 reasons for looking at Mr. Aref -- his name and phone number  
14 found in those camps in Iraq, including one camp where 80  
15 insurgents were killed, and we had the list of "missiles"  
16 and things.

17 So, there is no question the FBI  
18 appropriately, and it would have been utterly irresponsible  
19 not to, involved Mr. Aref. What did they do? A very simple  
20 thing. "Let's talk to him, say some things and see how he  
21 reacts. Tell 'em you work for JEM, see how he reacts. Tell  
22 him about a missile attack in New York and see how he  
23 reacts."

24 I submit to the Court, based on his own  
25 conduct, based on how he reacted, based on what he did, it's



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1 totally appropriate to sentence him within the guideline  
2 range.

3 Thank you, your Honor.

4 THE COURT: Thank you, Mr. Pericak.

5 Mr. Aref.

6 THE DEFENDANT: Yes.

7 THE COURT: You may be heard, sir.

8 THE DEFENDANT: Thank you, your Honor. Thank  
9 you very much, Honor, for to me to speak. And I like first  
10 to thank this Court for all for the time I spend here and  
11 whoever involve in this case in any way. And I start with  
12 marshal officer here, which brought me continuously one  
13 month for the trial. I did not see from them only respect  
14 and only they deal with me not even as a criminal, as a  
15 guest, and I'm very thankful for that and I believe they was  
16 shocked by the verdict more than me.

17 The same thing about the Rensselaer County  
18 Jail, which is my home for last almost 18 months, and most  
19 of them, the officers there, they are shocked and they tell  
20 me it's no way for us in whatever to believe you are bad  
21 man, you are danger, you are terrorist, you are -- they tell  
22 me that they believe it is wrong and they don't understand  
23 why I must to sleep in the cell alot.

24 And I thank after that these people in the  
25 back, which I believe they supported in many ways. Without

1 their support, my children, now they used to be on the  
2 street homeless because I was only the person I work and  
3 taking care of them; my wife, she have the new baby, she  
4 have three young children, she had health problem, she was  
5 not able to work. If not the support from these people  
6 (indicating), my children now they used to be on the street.  
7 For no any reason, for no any crime. If it's coming to  
8 commit the crime in this country, why I bring the sick wife  
9 and three young children with me to suffer? To be arrested  
10 after my crime? Why I bring them with me if I'm coming to  
11 commit any crime? I'm very thankful for these people in the  
12 back and I believe they must to stand up and they must to  
13 come in front and these people should to lead this country  
14 and to stop these people from making story, from taking this  
15 country toward the hell. These are the same people, Honor,  
16 they destroyed my country, Iraq, they killed seven hundred  
17 thousands innocent because they say we have the map, we have  
18 the video, we have the evidence, Iraq have the weapon of  
19 mass destruction. And they went to United Nation, they  
20 showed to all the universe this is our evidence, this is our  
21 map, this is our proof. Where it is now?

22 The same they did for me. I did not hear to  
23 answer anything about my case because they told me don't do  
24 it. But prosecutor, Mr. Pericak, now he say we give him the  
25 opportunity to do the crime. I knew my crime -- I knew JEM,

1 it is the terrorist. If anyone asks me, "Do you know Osama  
2 Bin Laden?" Yes, I hear about him in the TV, but that's  
3 mean I am with Osama Bin Laden because I hear in the TV  
4 about him? That's all I say about JEM. He ask me, "Do you  
5 know that?" I say, "I hear, I hear about them in the TV,"  
6 because I cannot lie to say never I heard about them. I'm  
7 the person daily I listen to the news, because every week I  
8 must to preach in the mosque. How I can to preach every  
9 week if I don't know what's going on in the universe? So,  
10 all my crime, I say I hear about that group on the TV. He  
11 say for helping them. At least ten time in the same  
12 meeting, continuously I say I don't know them, I don't know  
13 anything about them, I don't know who's leading them, I  
14 don't know who's (sic) their purpose, I don't know who's  
15 (sic) their goal. I cannot trust any politic organization.  
16 More than ten time continuously he try to make me emotional  
17 and say support them.

18 After he misguide me, he describe them not by  
19 terrorist group, by freedom fighter, they are working for  
20 their freedom. If best of for information he gave to me I  
21 say to support them, I must not to be criminal because he  
22 told me they are freedom fighter. For 40 years their land  
23 has been occupied and they work for their freedom. I am  
24 Kurdish, I knew the mean of freedom. Because Kurdish, they  
25 are biggest nation in this universe, at least 14 million

1 Kurdish like me, we are homeless, we are stateless, we are  
2 unoccupied territory, all for century. I knew the mean for  
3 freedom. When they told me freedom fighter, to be honest  
4 I'm not hiding anything, I'm not politician to lie. In the  
5 mosque, I preach same way; in the Court, I preach same way;  
6 in the jail, I told same way.

7                   Prosecutor and FBI, they interview me, I talk  
8 same way. I am saying the truth. I support freedom for all  
9 the nations, including Kashmil (phonetic), including  
10 Kurdistan, including Palestine, I want them to be free. But  
11 never I supported any terrorist act, any bombing, any  
12 innocent killing, any harming for children, any target or  
13 targeting any civilian. And they ask me every single thing  
14 terrorist they believe, because they try to make me to say  
15 something in the cassette. They ask me about suicide bomb  
16 in their cassette. I say it is not allowed in Islam. They  
17 say why they do? I say go ask them. Does they do? Does  
18 they plan for them? Does they give him the permission fatwa  
19 to do them or they will be charged in front of God for what  
20 they did? They asked me about killing the innocent. I say  
21 no way in Islam to kill the innocent. He ask me about do  
22 something in this country. I say we are not in Palestine to  
23 fight. We are in this country. We came, we sign, we  
24 promise to obey the law. You want to make me like -- in my  
25 culture, they say you want to be more Catholic than Pope,

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1 you want to tell me this is not Islamic law, why we should  
2 to respect it? I say no, because Islam make it obligatory  
3 for us to do because when we came to this country, we sign  
4 we should to obey the law, we should to respect the law, and  
5 Islam make it obligatory to respect the law.

6 How I do crime because I knew JEM terrorist  
7 group? I knew it was terrorist group, but what I have to do  
8 with JEM? Ever in my life I say I no met anything from JEM,  
9 nothing. He say you told us there will be attack in New  
10 York City. How he say it? Bring the cassette, tell me how  
11 he say it. What I did? I say God bless you, I say I'm  
12 coming to help you, I say who's doing it, why he doing it.  
13 When I hear that I kick him out from my house, I am Imam,  
14 not Muslim people allowed to disrespect their guest, doesn't  
15 matter what is they say. But as much I get I kick him out.  
16 And because they don't bring the cassette, because it is  
17 proof, I don't give any proof for what he say, because they  
18 lie, they say in that day they explain for me the word of  
19 Chaudhry, never they going to hear if they bring the  
20 evidence, the cassette for that day, because they brought  
21 the person, they scaring him, he testify, he say he used to  
22 call FBI, but Yassin told him Malik joking, that's why he  
23 did not call the FBI.

24 I swear by God if you give me death penalty,  
25 I am not going to swear by God falsely. I swear by God

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1 never I told him Malik he's joking. Anyway, today I came  
2 here and they told me don't say anything about the case.  
3 I'm sorry, I did not came here -- and this is my  
4 disagreement with my lawyer all the time. I say I believe  
5 in the court we should to talk about the evidence, not talk  
6 about Yassin is so funny and Yassin children. Because if  
7 Yassin worry about his children, he should not commit the  
8 crime. If I commit the crime, it is my problem, the  
9 children, not yours problem.

10 You should to be fair. But I believe we have  
11 clear proof they did nothing. But my lawyer's philosophy,  
12 he told me continuously, before and during the trial, it is  
13 no way, no way this jury, that time jury was sitting there,  
14 to make you guilty. No way evidence to make you crime for  
15 anything. But now I'm criminal, now I'm terrorist, now I'm  
16 guilty 10 charges which is still now I don't understand  
17 them, I don't know what is they are. I don't know. If  
18 somebody say he's going to -- he did not say he's -- if  
19 going to be some attack in New York City, I kick him out.  
20 What's my crime? What's I did? They told me oh, you are  
21 crime because you did not call the FBI. I say I did not  
22 call FBI because he was liar. Why you know he was liar?

23 Honor, if I do something like this or he knew  
24 something like this, why he were going to mention it?  
25 What's the reason for that guy to tell us next week it will

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1 be some attack? What's the reason? He say the reason. He  
2 say we told him because we want Yassin to be save, not go to  
3 New York City on that day. This is true if every day I go  
4 to New York City or every week. I am six years in this  
5 country, I did not went to New York City three time. What I  
6 do with New York City? Why you tell me that?

7 Say, Honor, I give -- say Malik, he trusted  
8 me, he told me. I have the guest, never saw Malik in his  
9 life. How somebody can in front of the guest to say  
10 something like this if it is true? Does make me to have any  
11 doubt it's not true and I did not call. And I don't know  
12 how I am crime. I believe even if it is true, I will not be  
13 crime because I did not show any signing for my approval for  
14 that, for support for that idea.

15 Second, if I believe terrorist attack or  
16 suicide attack against the principle of my faith and this is  
17 the same FBI Agent Hoover, he testified here when he asked  
18 me I say that, maybe somebody say, oh, he was FBI, why you  
19 say that? But where Malik he ask me, I don't know Malik,  
20 he's FBI, I say it's the same thing, society, it's against  
21 Islam. And how am I gonna believe something against Islam?

22 I am going to stop to say about the case, but  
23 any human being, Honor, any human being he see this  
24 evidence, he cannot believe I am guilty. And I believe many  
25 people, they wrote for you the letter, they was sitting

1   there, and every single day they came to the trial. It is  
2   beyond any human being's mind to say jury came to the  
3   conclusion based of the evidence. I'm not accusing them  
4   because we are human being, something maybe misguide us,  
5   something maybe confuse us, something maybe mistake we do.  
6   But, strongly, I believe it is this Court's duty to find  
7   that error, to make sure that justice has been fair and the  
8   fair decision has been made.

9                   I told this lawyer first time I saw him in my  
10   life, I say what's the evidence? If you believe I'm guilty  
11   in any charge, don't bring it to the trial, don't defend,  
12   don't use your experience, your knowledge to bring out the  
13   criminal person on the street to harm the people. If I did  
14   the crime, I will be happy to pay for it, to sleep in the  
15   jail; it's my crime, I pay for it. But if not, why I do?  
16   Why my daughter Dinya (phonetic), she's 15 months now, she  
17   don't know me, I was in jail when she born, she came to the  
18   jail, maybe they say a lot here, she believing I'm danger, I  
19   cannot carry her because she don't know me, she's scared  
20   from me, my daughter. Why? If I did the crime, I will not  
21   blame anyone. But I did nothing.

22                   And let me go back to what was in my mind to  
23   say because to be honest, they give me wrong information.  
24   Never they told me you have the right to argue any evidence.  
25   And never my lawyer he argue their evidence, even now, all



1 the time making the story, I say please, we are in court,  
2 leave the story, leave exaggerating Yassin he's this, he's  
3 this, he's peaceful man, Imam, brilliant, this and that.  
4 Yes, he suffered a lot in Iraq under Saddam and he has the  
5 family. No, this is all my problem. I suffered in Iraq, it  
6 is not your problem, Honor. My children suffer and it is  
7 not their problem, Honor. It is my problem. If I am worry  
8 about them, why I commit the crime? I say leave, don't beg  
9 them for mercy because my children's situation. Because I  
10 suffered alot under the Saddam. Don't beg that. Prove I  
11 didn't. And if I did something, I am in charge.

12 I am villager, Honor. I am villager. I born  
13 in the village, I live in the village. I have the parents;  
14 my father is the farmer in the isolated village in the third  
15 country. But every single person in my village, they  
16 believe human being they are in charge only for what they  
17 did and what they said. I'm not in charge what he say  
18 (indicating), doesn't matter what he say, only if I show my  
19 approval for it, only if I show the sign I am happy with  
20 that. But what he say what's my problem? I must to be in  
21 charge for what I did and what I say. I came to United  
22 State, I believe United State should be human being only in  
23 charge for what they did because no crime for talking in  
24 this country. This is not Iraq. I can talk, say something,  
25 criticize President Bush, I can say this government have the

1 wrong policy. I can't say they destroyed my country, they  
2 did not build it. They took the sectarian to the Iraq, not  
3 the democracy. I can't say they took Iraq hundred years  
4 back, not hundred years forward. I cannot say they did not  
5 change Iraq or Baghdad to become New York or London. They  
6 changed it back to be Magdule (phonetic) or Kabul. I cannot  
7 say that. In Iraq, if I say that, they will hang me. If I  
8 criticize the Government, I will be under the ground.

9                   That's why we came here, to be free, to live  
10 free, to have the dignity to live like the human being.  
11 What happened in this country, not only they charge the  
12 people for whatever they say or did, because if they charge  
13 the people like the villager they do in the third country, I  
14 will not be guilty. Honor, you or any human being search  
15 every single evidence, what is the act I do I am paying for?  
16 Even what is the word I say I am paying for? It's not  
17 there. It's not there.

18                   So what I am paying for? In this country,  
19 they have charge, this is different charge, never I hear in  
20 my village anywhere. They say he have intention, he will.  
21 I am guilty for my intention. But, Honor, I believe so, I  
22 believe God, only God, he know what is in the heart of the  
23 people. And I believe God. He did not gave the power to  
24 anyone, doesn't matter how much technology they have, they  
25 cannot go to my heart.

1                   In jail, we say they can jail you, but not  
2   jail your mind, not jail your heart. You can be free in  
3   your mind. I believe my heart, God give it to us, every  
4   individual. Nobody can enter something or take out  
5   something, only by your key. This is not secret code in the  
6   computer or e-mail somebody can open. This, God gave to  
7   every individual, never to go to the heart and check what is  
8   there. I'm guilty for my intention? They must to show when  
9   I show that intention. If I say this is not allowed in my  
10   faith, how I do it? Where the intention? And I believe if  
11   I have intention to do something wrong, say I put it in my  
12   mind and I did not, I must not be guilty.

13                  But God, he knew my heart. I swear by God I  
14   have no any intention, I never had intention to harm anyone  
15   in this country. And I don't know why I'm guilty. Sir,  
16   what's happen, I came from that country, from the village,  
17   which I believe I have no intention, I did nothing at all.  
18   I say nothing at all to be the criminal. And after that,  
19   all my life, Honor, because I am Kurd, they accuse the Kurd  
20   by being villager, by being danger, by being willed, by  
21   being animal, by being ignorant. This is description for  
22   Kurd in Iraq, in Turkish, in Iran, in all the country they  
23   have Kurdistan in. All of our life we struggle. We must to  
24   prove we are human being, nothing else. We are human being.  
25   Like any human being, God created us. Maybe we look a

1 little bit difference, but we are human being. We have two  
2 eyes, one mouth, two ear, we don't have tails, don't have  
3 horn, we are normal human being.

4 All my life for century we must to do that.  
5 I come to this country and I say that over. Everybody human  
6 being here, everybody in front of Honor and court, everybody  
7 have the same right for freedom of speech. In this country,  
8 me and seven million Muslim live in this country, all has  
9 been accused, they are willed, they are animal, they are  
10 danger, they are terrorist, they are ignorant and they must  
11 to prove now no, we are not, we are just human being.

12 And this lawyer, he told me, he told me  
13 things, he say you don't have to argue anything about the  
14 case because they prove something against you. All I want  
15 you to go there (indicating) and to speak so the jury they  
16 knew you are just human being. Why? Why they should to  
17 have the doubt I'm human being? This is not help in this  
18 country, your Honor. These seven million people they came  
19 to here as the Muslim, which is 95 percent of them citizen,  
20 they belong to this country. My children don't have  
21 citizenship in Iraq, don't have citizenship in Syria, don't  
22 speak even the Kurdish. Just they know English. Why they  
23 should be criminal just because they are Muslim? Why should  
24 we to prove we are human being? We have no horn, no tails  
25 on our back. Why?

1                   And I believe this is wrong, I believe this  
2   is not being any good for this country, for the system here,  
3   for anything. I one person. But if you gave me death  
4   penalty, I would take it proudly because -- I know you,  
5   Honor, and every single person and everybody, FBI, they  
6   check all my record, all my life, they interview thousands  
7   of the people, they brought all my life in Iraq, too, they  
8   knew never I did any violence, never I participate in any  
9   fighting, never I support any terrorist group in any way.  
10   They have everything, they knew that. And I believe, Honor,  
11   you have no doubt their evidence not prove anything.

12                   But with that, if they will be proud by  
13   putting me in the all my life in the jail and make my  
14   children to suffer, I will tell you and give you right, make  
15   them more proud and give me death penalty and I will take it  
16   proudly, not because I'm arrogant or proud person, because  
17   they knew and you knew and everybody knew I did nothing to  
18   be one day in the jail for. I did nothing to be one day in  
19   the jail for. And I did not came to this country to be in  
20   the jail. I came to be free. I did not came to this  
21   country to destroy this country. I came to be my life. I  
22   did not came to threaten any human being in this country, to  
23   terrorize any children. I came for my children to be safe  
24   from terrorist.

25                   I am going to stop here and I am going to

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1 don't finish. I have many thing to say, but I will repeat,  
2 I did nothing at all, even I say nothing at all. And God,  
3 he knew my heart I have no intention to harm anyone, and I  
4 believe what's done for me it is unfair and I believe,  
5 Honor, it is your duty to make sure that justice has been  
6 served. If not, give me death penalty.

7 Thank you very much for your time.

8 THE COURT: All right. Any reason I  
9 shouldn't sentence your client now?

10 MR. KINDLON: No, sir, there's none.

11 THE COURT: Mr. Aref, do you know any legal  
12 reason I shouldn't pass sentence on you?

13 THE DEFENDANT: I don't know. I'm villager,  
14 I don't know anything about legal, Honor, please.

15 THE COURT: Okay.

16 THE DEFENDANT: Thank you very much.

17 THE COURT: Well, sure, it's nice for you to  
18 believe you're innocent, but, of course, you were convicted  
19 here after proof was introduced before a jury, they heard  
20 the proof, they made the decision. The Court reviewed that  
21 decision and decided that it was, in fact, correct, that you  
22 did break the law, that you intended to help that group,  
23 that you wanted to achieve those ends, even though you  
24 weren't quite clear what they were. But what you did do was  
25 continue on and participated in a scheme that would launder

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1 money, that would ultimately be used, so you were told by  
2 Malik, for the purposes of helping your Mujaheddin brothers.  
3 And my listening to the evidence made me believe that's  
4 exactly what you wanted to happen. And that's without  
5 debating the issue, I am not gonna do that, because your  
6 point of view is going to be aired thoroughly in the Second  
7 Circuit Court of Appeals, and if this was done in error or  
8 unjustly done, they're gonna tell us about it, they will  
9 send it back for either a new trial or some other  
10 disposition, and that's fine, that's what their job is.

11 But from this Court's perspective, being here  
12 for the whole trial, my belief is that you were guilty of  
13 the crimes that the jury found that you committed, by your  
14 own free will, in a free country, not caring about your wife  
15 or your children, but caring about your purposes. And,  
16 again, I don't want get into a political debate with you,  
17 because this is not the forum for that.

18 Now, this is gonna take a little bit of time.  
19 I want to apologize, in a fashion. Not that I'm gonna do  
20 anything that I consider to be improper, but what I am gonna  
21 do is cite to a lot of sections in the Guidelines and a lot  
22 of case law, so some of you may not understand what I'm  
23 saying. Of course, at the end of this recitation, you will  
24 all understand what my sentence will be in this case without  
25 question. So, I am going to begin now, and hopefully, it

1 won't take too long.

2                   The Court has, of course, reviewed and  
3 considered all the pertinent information, including what was  
4 said here today, presentence investigation report, and the  
5 addendum, all the submissions by counsel, the petitions, the  
6 letters, all the factors outlined in 18 U.S. Code Section  
7 3553 and the Sentencing Guidelines.

8                   Court adopts the factual information  
9 contained in the presentence investigation report.

10                  As to the United States Sentencing Guidelines  
11 calculation, the Court will start by addressing the  
12 guideline calculation for Mr. Aref's convictions on Counts  
13 20, 26 and 27. On these counts, Mr. Aref was convicted of  
14 one count of conspiracy to provide material support to a  
15 Designated Terrorist Organization, in violation of 18 U.S.  
16 Code Section 2339B and two counts of attempting, or aiding  
17 and abetting an attempt, to provide material support to a  
18 Designated Terrorist Organization, in violation of 18 U.S.  
19 Code, Sections 2339B and 2. The Sentencing Guidelines  
20 manual specifies that for violations of 18 U.S. Code  
21 Section 2339B, the applicable guideline is United States  
22 Sentencing Guidelines 2M5.3. Under 2M5.3(a), the base  
23 offense level is a 26.

24                  Section 2M5.3(b)(1), specific offense  
25 characteristics, provides that if the offense involved the



1 provision of funds or other material support or resources,  
2 with the intent, knowledge or reason to believe they are  
3 being used to commit or assist in the commission of a  
4 violent act, increase by 2 levels. The facts at trial  
5 established that the material support in issue -- that is,  
6 the laundering of funds from the confidential witness'  
7 purported illegal importation of a surface-to-air missile --  
8 was aided and abetted by Mr. Aref with the intent,  
9 knowledge, and belief that the surface-to-air missile would  
10 be used in an attack on the Pakistani Ambassador in New York  
11 City. Thus, the offenses clearly involved the provision of  
12 material support with the intent, knowledge or reason to  
13 believe that the material support would assist in the  
14 commission of a violent act. Accordingly, 2 points are  
15 added.

16 Section 3A1.4, the terrorism enhancement,  
17 provides at subsection (a) that if the offense is a felony  
18 that involved, or was intended to promote, a federal crime  
19 of terrorism, increase by 12 levels; but if the resulting  
20 offense level is less than level 32, increase to level 32.  
21 This enhancement also provides at subsection (b) that in  
22 each such case, the defendant's criminal history category  
23 from Chapter 4, criminal history and criminal livelihood,  
24 shall be category 6.

25 Pursuant to application note 1, a federal

1 crime of terrorism has the meaning given that term in  
2 18 U.S. Code Section 2332b(g)(5). That provision contains a  
3 two-part definition: One, the crime must be an offense that  
4 is calculated to influence or affect the conduct of  
5 government by intimidation or coercion, or to retaliate  
6 against government conduct; and the crime must be listed in  
7 Section 2332b(g)(5)(B).

8 Both 2339A, which I will address in a moment,  
9 and Section 2339B, are listed in Section 2332b(g)(5)(B).  
10 Further, based on statements by the confidential witness  
11 during the course of the criminal venture, the evidence  
12 established that Mr. Aref committed the crimes believing  
13 that Jaish-e-Mohammad, the group that purportedly received  
14 the surface-to-air missile, was intending to deploy it  
15 against the Pakistani Ambassador in order to teach the  
16 President of Pakistan a lesson. Thus, the evidence was  
17 sufficient to establish that the Section 2339B offenses  
18 involved a federal crime of terrorism that was calculated to  
19 influence or affect the conduct of government by  
20 intimidation or coercion, or to retaliate against the  
21 government conduct. See United States versus Arnaout,  
22 431 F.3d 994 at 1001; United States versus Mandhai, 375 F.3d  
23 1243 at 1247; United States versus Graham, 275 F.3d 490 at  
24 516; see also United States versus Hale, 448 F.3d 971,  
25 footnote 1; United States versus DeAmaris, 406 F.Supp.2d 748

1 at 750. Therefore, 12 levels will be added under the  
2 terrorism enhancement.

3 For the reasons set forth in the presentence  
4 report at paragraphs 84, 85 and 87, the Court finds that no  
5 other adjustments are warranted for offense level.

6 With regard to an obstruction of justice  
7 enhancement pursuant to 3C1.1 of the guidelines, the Court  
8 does not find that the enhancement applies simply because  
9 Mr. Aref chose to testify in his own behalf at trial. As  
10 evidenced by the guilty verdicts on some, but not all, of  
11 the counts, the jury evidently chose not to credit all of  
12 his testimony. However, this does not establish that he  
13 gave false testimony concerning a material matter with the  
14 willful intent to provide false testimony, rather than as a  
15 result of confusion, mistake or faulty memory. United  
16 States versus Dunnigan, 507 US 87 at 94. Accordingly, the  
17 total offense level is 40 for the 2339B convictions.

18 Turning to criminal history, the application  
19 of the terrorism enhancement results in a presumptive  
20 criminal history category of 6 for Mr. Aref. While the  
21 Second Circuit has held that, quote, "Congress and the  
22 Sentencing Commission had a rational basis for creating a  
23 uniform criminal history category for all terrorists under  
24 Section 3A1.4(b)," the Circuit also noted, in the same case,  
25 that the District Court always has the discretion under

1 Section 4A1.3(b) to depart downward in sentencing. United  
2 States versus Meskini, 319 F.3d 88 at page 92. Thus, even  
3 where the terrorism enhancement applies, a horizontal  
4 departure on criminal history is warranted under 4A1.3(b) if  
5 the criminal history category of 6 substantially  
6 overrepresents the seriousness of the defendant's criminal  
7 history or the likelihood that the defendant will commit  
8 other crimes.

9                   The Court finds that a criminal history  
10 category of 6 does substantially overrepresent the  
11 seriousness of the defendant's criminal history. As  
12 indicated in the presentence investigative report at  
13 paragraphs 91 through 94, Mr. Aref has no prior criminal  
14 adjudications and received zero total criminal history  
15 points, as scored by the United States Probation Department.  
16 The credible and reliable evidence indicates that Mr. Aref  
17 came to this country with his family, with a limited  
18 understanding of the English language, and provided for his  
19 family, until his arrest, through lawful employment in  
20 various capacities. The information available to the Court  
21 indicates that he has been a good father and husband, and  
22 there's no indication that he's engaged in any other  
23 criminal activity in this country. Further, as indicated in  
24 the presentence report, Mr. Aref has been an Imam at the  
25 local mosque, in which capacity he has been a spiritual

1 leader for many members of the community in Albany, New  
2 York. His positive impact on numerous members of the  
3 community is evidenced by the letters and petitions  
4 submitted on Mr. Aref's behalf. Based upon Mr. Aref's lack  
5 of prior criminal history and his personal characteristics  
6 as set forth in -- that must be considered in the statute,  
7 the Court finds his circumstances to be extraordinary and  
8 that a downward departure is warranted to a criminal history  
9 category of 1.

10 Pursuant to United States Sentencing  
11 Guideline Chapter 5, Part A, based on the total offense  
12 level of 40, and a criminal history category of 1, the  
13 guideline range for imprisonment is 292 to 365 months.  
14 Pursuant to 18 U.S. Code Section 2339B, the statutory  
15 maximum term of imprisonment for Counts 20, 26 and 27 is  
16 180 months. The Court will address the relationship of the  
17 statutory maximum to the guideline range in a moment.

18 I can see your eyes are all glazed over, and  
19 I don't blame you one bit.

20 The Court turns next to Count 12, upon which  
21 Mr. Aref was convicted of conspiracy to conceal or disguise  
22 the nature, location, source or ownership of material  
23 support or resources in connection with an attack with a  
24 weapon of mass destruction on a person or property within  
25 the United States, in violation of 18 United States Code

1 Section 2339A; and Counts 18 and 19 upon which Mr. Aref was  
2 convicted of two substantive counts of attempting, or aiding  
3 and abetting an attempt, to conceal or disguise the nature,  
4 location, source or ownership of material support or  
5 resources in connection with an attack with a weapon of mass  
6 destruction on a person or property within the United  
7 States, in violation of 18 United States Code Section 2339A  
8 and 2.

9                   For a violation of 18 U.S. Code Section  
10 2339A, the applicable guideline is Section 2X2.1 or  
11 Section 2X3.1. These provisions, in turn, direct that the  
12 offense level is the same as that for the underlying  
13 offense. The underlying offense charged in these counts was  
14 a violation of 18 U.S. Code Section 2332a, the unauthorized  
15 use of a weapon of mass destruction on a person or property  
16 within the United States.

17                   A guideline sentence for a violation of  
18 2332a is determined using either 2K1.4 or Section 2M6.1.  
19 Section 2M6.1, which is the higher guideline, does not apply  
20 because the definition of weapon of mass destruction in  
21 application note 1 excludes the subsection of 2332a that is  
22 charged in the superseding indictment. Under United States  
23 Sentencing Guidelines Section 2K1.4, the base offense level  
24 is, therefore, 24.

25                   For the reasons discussed a moment ago, the

1 terrorism enhancement of United States Sentencing Guideline  
2 Section 3A1.4 applies to the 2339A convictions, resulting in  
3 a 12-point increase to an offense level 36. Also for the  
4 reasons discussed a moment ago, the Court finds that no  
5 adjustments apply and that a downward departure to criminal  
6 history category 1 is warranted in this case.

7 Pursuant to United States Sentencing  
8 Guideline Chapter 5, part A, based on total offense level of  
9 36, and a criminal history category of 1, the guideline  
10 range for imprisonment for Counts 12, 18 and 19 is 188 to  
11 235 months. Pursuant to 18 U.S. Code Section 2339A, the  
12 statutory maximum term of imprisonment for Counts 12, 18 and  
13 19 is 180 months.

14 Mr. Aref was also convicted of conspiracy and  
15 two substantive offenses of money laundering in violation of  
16 18 U.S. Code Section 1956. See Counts 1, 10 and 11. The  
17 Sentencing Guidelines manual specifies that for violations  
18 of 18 United States Code Section 1956, the applicable  
19 guideline is United States Sentencing Guideline Section  
20 2S1.1.

21 Under Section 2S1.1(a)(2), the base offense  
22 level for these convictions is 8 plus the number of levels  
23 from the table in Section 2B1.1 corresponding to the value  
24 of the laundered funds. Because the value of the laundered  
25 funds in this case was more than \$30,000 and less than

1 \$70,000, 6 additional levels are added.

2 As to specific offense characteristics,  
3 Section 2S1.1(b)(1) provides that if the defendant knew  
4 or believed that any of the laundered funds were the  
5 proceeds of or were intended to promote a crime of violence  
6 or an offense involving firearms or explosives, increase by  
7 6 levels. The evidence established that Mr. Aref believed  
8 that the laundered funds were the proceeds of the illegal  
9 importation of a firearm or explosive and that he believed  
10 that money laundering scheme was intended to promote a crime  
11 of violence involving the use of a firearm or explosives.  
12 Accordingly, 6 additional levels are added.

13 Next is the question of whether the terrorism  
14 enhancement of Section 3A1.4 applies to the money laundering  
15 conviction. As the Court indicated previously, in order for  
16 this enhancement to apply, the offense must be a felony that  
17 involved or was intended to promote a federal crime of  
18 terrorism. Section 3A1.4(a), application note 1 provides  
19 that a federal crime of terrorism has the meaning given that  
20 term in 18 U.S. Code Section 2332b(g)(5). Under Section  
21 2332b(g)(5), the crime must be an offense that is calculated  
22 to influence or affect the conduct of government by  
23 intimidation or coercion, or to retaliate against government  
24 conduct and as listed in Section 2332b(g)(5)(B).

25 Since 18 U.S. Code Section 1956 is not listed



1 in Section 2332b(g)(5)(B), this offense does not involve a  
2 federal crime of terrorism. Nonetheless, the terrorism  
3 enhancement is properly applied to the money laundering  
4 convictions under the "intended to promote" prong of the  
5 enhancement's language if the purpose or intent of the  
6 defendant's substantive offense of conviction or relevant  
7 conduct was to promote a federal crime of terrorism. United  
8 States versus Arnaout, 481 F.3d 994 at 1000-1001; see also  
9 United States versus Hale, 448 F.3d 971 at 988; United  
10 States versus Mandhai, 375 F.3d 1243 at 1247; United States  
11 versus Graham, 275 F.3d 490 at 517.

12 Here, the evidence established that Mr. Aref  
13 believed that funds being laundered were the proceeds from  
14 the sale of a surface-to-air missile that was to be used in  
15 an attack on the Pakistani Ambassador by Jaish-e-Mohammad to  
16 teach the President of Pakistan a lesson. Thus, the  
17 evidence was sufficient to establish that, through the money  
18 laundering scheme, Mr. Aref intended to promote a federal  
19 crime of terrorism that was calculated to influence and  
20 affect the conduct of government by intimidation or  
21 coercion, or to retaliate against government conduct.  
22 Accordingly, the terrorism enhancement applies to the  
23 Section 1956 convictions and 12 levels are added. No  
24 additional adjustments are warranted, bringing the total  
25 offense level to 32.

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1                   Also, for reasons discussed a moment ago, the  
2 Court finds that a downward departure to criminal history  
3 category 1 is warranted.

4                   Pursuant to United States Sentencing  
5 Guidelines Chapter 5, part A, based on a total offense level  
6 of 32, and a criminal history category of 1, the guideline  
7 range for imprisonment for Counts 1, 10 and 11 is 121 to 151  
8 months. Pursuant to 18 United States Code, Section 1956,  
9 the statutory maximum term of imprisonment for Counts 12, 18  
10 and 19 is 240 months.

11                   On Count 30, Mr. Aref was convicted of making  
12 a false statement to the FBI, in violation of 18 United  
13 States Code Section 1001. Under guideline Section 2B1.1(a),  
14 the base offense level for this crime is 6. No specific  
15 offense characteristics from 2B1.1(b) need to be applied.  
16 Again, the Court applies a criminal history category of 1.

17                   Pursuant to United States Sentencing  
18 Guidelines, Chapter 5, part A, based on a total offense  
19 level of 6 and a criminal history category of 1, the  
20 guideline range for imprisonment on Count 30 is zero to  
21 6 months. Pursuant to 18 United States Code Section 1001,  
22 the statutory maximum term of imprisonment for Count 30 is  
23 96 months.

24                   Now, United States Sentencing Guideline  
25 Section 5G1.2(d) provides, if the sentence imposed on the

1 count carrying the highest statutory maximum is less than  
2 the total punishment, then the sentence imposed on one or  
3 more of the other counts shall run consecutively, but only  
4 to the extent necessary to produce a combined sentence equal  
5 to the total punishment. In all other respects, sentences  
6 on all counts shall run concurrently, except to the extent  
7 otherwise required by law.

8                   The counts carrying the highest statutory  
9 maximum are the 1956 counts, which carry a 240-month  
10 statutory maximum. The guideline sentence for Section 1956  
11 offenses is 121 to 151 months, which is less than the  
12 240-month statutory maximum. Referring to Section 5G1.2(d),  
13 the Second Circuit recently held, quote, "where the  
14 guidelines-recommended sentence exceeds the statutory  
15 maximum on some counts, but not others, the Court should  
16 impose no more than the statutory maximum on any one count,  
17 but should impose a sentence consecutively to the extent  
18 necessary to reach the recommended guideline range."  
19 United States versus Reifler, 446 F.3d 65 at 113.

20                   The Section 2339B convictions carry the  
21 highest adjusted offense level. Consequently, in accordance  
22 with United States Sentencing Guideline Section 3D1.3(a),  
23 these offenses are controlling for scoring purposes. The  
24 guideline range for these offenses, which can be grouped  
25 with the other offenses of conviction under United States

1 Sentencing Guideline Section 3D1.3(b), constitutes the total  
2 punishment for purposes of Section 5G1.2(d). See  
3 presentence report at paragraph 80, discussing grouping.  
4 The guideline range for the Section 2339B offenses is 292 to  
5 365 months.

6 Thus, if the Court were to apply Section  
7 5G1.2(d), Mr. Aref's sentence of imprisonment on the various  
8 convictions would be imposed within their statutory maximums  
9 but consecutively up to the point that the total punishment  
10 sentence of imprisonment under the guidelines was reached.  
11 In this regard, applying Section 5G1.2(d) would result in an  
12 aggregate sentence of at least 292 months, which is the  
13 lower end of the guideline range for the 2339B convictions.

14 However, as a result of United States versus  
15 Booker, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621,  
16 Section 5G1.2(d) of the sentencing guidelines is advisory.  
17 United States versus Kurti, 427 F.3d 159 at 164.  
18 Accordingly, this Court possesses discretion to determine,  
19 after application of the 3553(a) factors, whether to impose  
20 consecutive or concurrent sentences. Now, the Court is  
21 gonna state for the record, it's well aware of each and  
22 every factor enumerated in that statute and I am not going  
23 to reiterate it here, because there's pages and pages of  
24 other Judge's stating those factors. The Court's well aware  
25 of them and knows how to apply them.

1                   Considering the factors set forth in  
2   Section 3553(a), the Court finds that an appropriate  
3   sentence is reached without applying Section 5G1.2(d). The  
4   underlying terrorism crime around which the sting was  
5   purportedly based is a serious offense, and those who  
6   support these types of crimes deserve substantial punishment  
7   to deter them and others like them from committing similar  
8   crimes in the future. But having said that, and having  
9   considered that Congress determined that the statutory  
10   maximum sentences for the Section 2339A and Section 2339B  
11   offenses to be 180 months, the Court finds that a sentence  
12   of 180 months is reasonable and sufficient to accomplish the  
13   goals set forth in Section 3553(a).

14                   While the underlying crime is serious, the  
15   evidence does not support the proposition that Mr. Aref  
16   actively sought out some way to aid a terrorist crime;  
17   rather, the crimes were presented to him. In addition,  
18   27 of the 30 counts arose out of a sting operation and  
19   Mr. Aref was convicted of only 9 of those 27. By the jury's  
20   determination, it can be fairly said Mr. Aref, while  
21   possibly aware of the criminal transaction for some time,  
22   did not knowingly, intentionally and criminally associate  
23   himself with it until July 1, 2004, over six months after he  
24   became involved in the transactions between the confidential  
25   witness and the defendant Hossain. While his delay in

1 entering into the scheme does not diminish his criminal  
2 responsibility, it does play some role in consideration to  
3 the appropriate sentence for this defendant. The Court  
4 finds that the need to punish this defendant and protect the  
5 public from further crimes of Mr. Aref is adequately served  
6 by a sentence of 180 months.

7               The Court has considered Mr. Aref's motion  
8 for a further departure under 5K2.0 of the sentencing  
9 guidelines based upon a combination of factors. While the  
10 Court is aware that it has the authority to depart under  
11 Section 5K2.0 under appropriate circumstances, the Court  
12 finds that those circumstances are not present here. The  
13 combination of factors argued by defendant does not remove  
14 this case from the heartland of cases covered by the  
15 guidelines. Accordingly, the motion for a Section 5K2.0  
16 downward departure is denied.

17               Therefore, Mr. Aref, upon your conviction at  
18 trial of Counts 1, 10, 11, 12, 18, 19, 20, 26, 27 and 30 of  
19 the superseding indictment, it is the judgment of this Court  
20 that you are hereby committed to the custody of the Bureau  
21 of Prisons to be imprisoned for a term of 151 months on each  
22 of Counts 1, 10 and 11; 180 months on each of Counts 12, 18,  
23 19, 20, 26, and 27; and 6 months on Count 30. The sentences  
24 on all counts are to run concurrently with one another.  
25 Therefore, the aggregate term of imprisonment for all counts

1 is 180 months.

2                   Upon your release from imprisonment, you  
3 shall be placed on supervised release for a period of three  
4 years on each of the 10 counts of conviction. These terms  
5 of supervised release are to run concurrently, pursuant to  
6 18 U.S. Code Section 3624(e), for a total term of supervised  
7 release of three years. While on supervised release, you  
8 shall not commit another federal, state or local crime and  
9 shall comply with the standard conditions that have been  
10 adopted by this Court and the following special conditions:

11                   If you're deported or otherwise leave the  
12 United States, you shall not enter or attempt to enter the  
13 United States without the permission of the Secretary of the  
14 Department of Homeland Security. If you do re-enter the  
15 United States, you shall report to the probation office in  
16 the Northern District of New York within 72 hours.

17                   You shall report to and remain in contact and  
18 cooperate with the Bureau of Immigration and Customs  
19 Enforcement, and you shall fulfill any requirements of U.S.  
20 Immigration Law.

21                   You shall provide the Probation Officer with  
22 access to any requested financial information.

23                   You shall commit your person, property,  
24 vehicle, papers and effects to search at any time, with or  
25 without a warrant, by any federal probation officer with

1 reasonable suspicion concerning a violation of the  
2 conditions of supervised release or unlawful conduct by you.

3 The Court has reliable information which  
4 indicates you pose a low risk of future substance abuse, so  
5 the mandatory drug testing condition is suspended.

6 Pursuant to 18 United States Code Section  
7 982(a)(1), 18 United States Code 981(a)(1)(C) and 28 United  
8 States Code Section 2461, and as fully outlined in the  
9 preliminary order of forfeiture, you shall forfeit to the  
10 United States all right title and interest in \$40,000 United  
11 States currency, but shall receive credit for any funds  
12 previously recovered.

13 Further ordered you pay a special assessment  
14 to the Clerk of the Court of \$100 on each count of  
15 conviction, for a total of \$1,000, which is due immediately.

16 The Court finds, based on your financial  
17 resources, projected earnings and other income, as well as  
18 your obligations, that you do not have the ability to pay a  
19 fine.

20 Both you and the Government have the right to  
21 appeal this sentence under certain limited circumstances and  
22 you're advised to consult with your attorney to determine  
23 whether or not an appeal is warranted. Any appeal must be  
24 filed within 10 days of the date of this sentence.

25 You are remanded to the custody of the



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1 U.S. Marshal in accordance with the terms of this sentence.

2 Court stands adjourned in this matter.

3 MR. PERICAK: Thank you, your Honor.

4 MR. KINDLON: Thank you, Judge.

5 (This matter adjourned at 10:47 AM.)

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CERTIFICATION:

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I, THERESA J. CASAL, RPR, CRR, Official Court

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Reporter in and for the United States District Court, Northern

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District of New York, do hereby certify that I attended at

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the time and place set forth in the heading hereof; that I

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did make a stenographic record of the proceedings held in

9

this matter and cause the same to be transcribed; that the

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foregoing is a true and correct transcript of the same and

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the whole thereof.

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THERESA J. CASAL, RPR, CRR

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Official Court Reporter

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DATE:

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THERESA J. CASAL, RPR, CRR  
UNITED STATES COURT REPORTER - NDNY

